IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX REFERENCE NO.50 OF 1998

M/s.Gujarat Co-op. Oilseeds
Growers Federation Limited,
Narayan Chambers, 4th Floor,
Ashram Road,
AHMEDABAD - 380 009 .. Applicant.

V/s.

Commissioner of Sales Tax,
Maharashtra State
Mumbai .. Respondent.

Mr.P.V. Surte i/b. P.V. Surte & Co. for the applicant.

Ms.Madhubala Kejle, AGP for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 6TH MAY, 2005.

ORAL JUDGMENT : (Per J.P. Devadhar, J.)

1. The question referred by the Maharashtra Sales Tax Tribunal, Mumbai under Section 61 of the Bombay Sales Tax Act, 1959 reads as under :

> Whether on a true and correct interpretation of Entry 222 of the Notification issued under section 41 of the Bombay Sales Act, 1959, the Hon'ble Tribunal was justified in holding that the exemption claimed in respect of Sales of refined rapeseed oil to the tune of

Rs.7,55,00,23/- is not admissible, though the said oil was purchased from the National Dairy Development Board and sold within the State of Maharashtra, merely because it was delivered to the applicant in Gujarat ?

2. The applicant is a Federation of oilseeds growers having its head office at Ahmedabad and a branch office at Mumbai (hereinafter referred to as 'the assessee'). The head office at Ahmedabad has registered itself as a dealer under the Gujarat Sales Tax Act and the branch office at Mumbai is registered as a dealer under the Bombay Sales Tax Act, 1959 ('BST Act' for short).

3. During the assessment period July 1, 1987 to March 31, 1989 the assessee's head office at Ahmedabad purchased imported refined rapeseed oil/soyabean oil donated by the Co-operative league of United States of America / Canada ('donated oil' for short) to the tune of Rs.6,99,170/- from the National Dairy Development Board ('NDDB' for short) at Ahmedabad and after transferring the said goods in to Maharashtra as stock transfer sold the same within the State of Maharashtra for Rs.7,55,00,237/-. The assessee claimed that the sale of the above goods

were exempt under Notification No.222 issued under Section 41 of the BST Act.

4. The Assistant Collector of Sales Tax (assessment) disallowed the claim of the assessee on the ground that the assessee did not prove that the oil sold by the assessee was the donated oil. The Assistant Commissioner, accordingly, held that the impugned sales were subjected to tax and accordingly demanded a sum of Rs.39,63,762/- towards tax and Rs.26,05,350/- towards interest under Section 36(3)(b) of the BST Act.

5. The assessee filed an appeal against the said order but the same was dismissed by the appellate authority. On second appeal filed by the assessee, the Maharashtra Sales Tax Tribunal recorded that although it is undisputed that the donated oil was purchased by the assessee's head office at Ahmedabad from NDDB and the very same donated oil on stock transfer were sold by the assessee in the State of Maharashtra, the benefit of exemption Entry 222 is not available to the assessee because the donated oil was not purchased by the assessee in the State of Maharashtra. On a reference application filed by the assessee, the Maharashtra Sales Tax Tribunal has

referred the aforesaid question for the decision of this Court.

6. The entire dispute in the present reference pertains to the interpretation of notification Entry No.222 issued under Section 41 of the BST Act. For the sake of convenience, we reproduce hereinbelow the said Entry :

Sr. No.	Classes of Sales or purchases	Exemption whether whole or part of tax	Condi tions	G.F.N.D. No., Date and Duration
222 (1)	Sales of Soyabean or rapeseed oil donated by the Co-operative league of the United States of America or by the Co-operative Union of Canada either in the same form or after refining the same if sold by -	Whole of tax	Nil	Government Notificati-on Finance Department No.STA 1085/ Cr-165/RES-8 dated the 15th Nov. 1985
	(i) The National Dairy Development Board			1.2.85 to to date
	(ii) The Maharashtra State Co-operative Oil Seeds Grower's Federation Limited, which has purchased the same from the National Dairy Developpment Board on 1.2.1985 to 22.3.1989			
	(iii) any dealer who has purchased it from any of the institutions specified in item (i) or (ii) above or from any dealer who has			

		purchased the same from the said institutions (Sub-clause (iii) of Clause (1) was deleted by GN dated 23.3.1989)		
(2)	Purchases of soyabean or rape-seed oil donated by the Co-operative League of the United States of America or Union of Canada either in the same form or after refining the same if the same is purchased by the Maharashtra State Co-operative OIlseeds Grower's Federation Limited or the same is purchased by any dealer from Maharashtra State Co-operative Oilseeds Grower's Federation Limited	Whole of tax	Nil	Government Notification Finance Department No.STC 1085/ CR-165-RES-8 dated the 15th Nov. 1985.

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7. Mr.Surte, learned advocate appearing on behalf of the assessee submitted that the exemption notification in question was issued in the light of the Memorandum of Understanding entered into by and between the Government of Canada and the Government of India on July 4, 1983. As per Article 4 of the above Memorandum of Understanding, Entry of the donated oil was to be kept free from all duties and tax and from any need for payment to the Government of India by the NDDB. He submitted that in the light of the aforesaid Memorandum the notification Entry 222 was issued under Section 41 of the BST Act. He

submitted that the said notification nowhere states that to avail exemption, the donated oil must be purchased in Maharashtra and that the donated oil if purchased from Gujarat or for that reason from any other State in India and thereafter sold in Maharashtra, the benefit of the exemption will not be available. Accordingly, the counsel submitted that on a plain reading of the notification it is clear that the assessee who has purchased the donated oil from NDDB through their Head office at Gujarat and transferred the same to the Bombay branch as a stock transfer and sold in Maharashtra is entitled to avail the exemption.

8. Mr.Surte further submitted that NDDB is a dealer registered in the State of Gujarat as well as in the State of Maharashtra. He submitted that the said notification cannot be construed narrowly so as to hold that the exemption notification is available only if the donated oil is purchased within the State of Maharashtra when in fact there is no such requirement in the exemption notification. Mr.Surte submitted that under Section 8(1)(ii) of the BST Act, sale of goods within the State of Maharashtra are deducted from the total turnover before the levy of Sales Tax, if such goods are purchased from a

registered dealer. Therefore, when sale of goods from one registered dealer to another registered dealer within the State of Maharashtra are already exempt under Section 8(1)(ii) of the BST Act, there was no need to issue exemption notification under Section 41 of the BST Act. In other words, according to Mr.Surte the contention of the revenue that the benefit of exemption Entry No.222, is available only if the donated oil is purchased in the State of Maharashtra renders the exemption notification nugatory because purchase of donated oil by the assessee/dealer from NDDB's, branch office at Bombay, also a dealer in Maharashtra is even otherwise exempt under Section 8 (1)(ii) of the BST Act and, therefore, a construction which renders the exemption notification redundant cannot be accepted.

9. Mr.Surte further submitted that the Tribunal was in error in holding that the exemption notification was not available in the present case because the donated oil was purchased by the assessee's head office at Gujarat and thereafter transferred to Bombay as stock transfer. Relying upon the decision of the Apex Court in the case **Sahney Steel & Press Works Limited and Another V/s. Commercial Tax Officer [60 STC 301 (SC)]**, Mr.Surte

submitted that though the registered office at Ahmedabad and the branch office at Bombay are registered separately the benefit of exemption notification cannot be denied merely because delivery of the donated oil was taken by the assessee's head office at Ahmedabad and thereafter transferred to Bombay as stock transfer. Relying upon the decision of the Apex Court in the case of **Tata Oil Mills Limited V/s. Collector of Central Excise [82 STC 225 (SC)]** Mr.Surte submitted that while construing the exemption notification one must keep in mind the object and purpose of the notification and the entry in relation to which the exemption is granted. When exemption notification is clear and unambiguous and there is no requirement that the said goods must be purchased in Maharashtra it will not be proper to read the exemption notification by adding the words 'in the State of Maharashtra' as it would amount to rewriting the exemption notification which is not permissible in law. Relying upon the decision of the Apex Court in the case of **Union of India V/s. Wood Paper Limited [83 STC 251 (SC)]**, Mr.Surte submitted that in view of the clear and unambiguous words used in the exemption notification, it must be held that the benefit of the exemption notification will be available to the assessee on sale of donated oil in

Maharashtra irrespective of the fact that the donated oil was purchased from NDDB at Gujarat.

10. Mrs.Kejle, learned AGP appearing on behalf of the respondents on the other hand submitted that the legislature of the State is empowered to enact law in relation to the transaction taking place within its territorial jurisdiction. She submitted that the transaction effected outside the State are not covered under the BST Act and, therefore, the purchases made by the assessee's head office at Ahmedabad from the NDDB cannot be said to be covered under the exemption notification issued under Section 41 of the BST Act. In other words, according to the learned AGP, benefit of the exemption is available only if the dealer who has sold the donated oil in Maharashtra has purchased the same in the State of Maharashtra. It was submitted that in the present case the donated oil has been admittedly purchased by the assessee's head office at Gujarat and the same were not purchased by the assessee in the State of Maharashtra and, therefore, the benefit of the exemption is not available to the assessee. The learned AGP submitted that in the present case admittedly the assessee received the donated oil in the State of Maharashtra as stock transfer from their

head office at Ahmedabad. According to the learned AGP, the transfer of goods by stock transfer cannot be said to be purchase of the said by the assessee and consequently the assessee cannot be said to have purchased the donated oil in the State of Maharashtra and, therefore, not entitled to claim benefit of the exemption notification issued under Section 41 of the BST Act.

11. Learned AGP further submitted that the notification Entry No.222(1) necessarily contemplates purchases and sales of the donated oil within the State of Maharashtra. This is because the sale which is otherwise liable to tax can only be intended to be exempt under the notification. She submitted that the procurement of the donated oil by a dealer outside the State of Maharashtra cannot be covered under the exemption notification issued under the BST Act. It was submitted that admittedly the dealer in Gujarat i.e. the assessee’s head office in Gujarat is not doing any business of sale or purchase within the State of Maharashtra and, therefore, the purchase of donated oil at Gujarat by the assessee’s head office from NDDB cannot be said to be covered under the exemption notification. The learned AGP further submitted that the contention of the assessee that

the exemption Entry 222 should be read widely so as to includes purchases made by any dealer outside Maharashtra cannot be accepted because exemption Notification issued under the BST Act can only be in respect of the transactions taking place within the State. If the contention of the assessee is accepted then the exemption Notification would to be struck down being in excess of the powers vested under the BST Act. Therefore, such a construction which renders exemption Notification itself being struck down cannot be accepted. In this connection, she relied upon the decision of the Apex Court in the case of **State of Maharashtra and Others V/s. Santosh Shankar Acharya [2000 (7) SCC 467]**. Accordingly, it was submitted that the Tribunal was justified in holding that the assessee is not entitled to avail the benefit of the exemption notification.

12. On careful consideration of the rival submissions, we are of the opinion that the contentions raised on behalf of the assessee deserve to be accepted. The exemption notification Entry 222(1) issued under Section 41 of the BST Act provides for exemption on sale of soyabean or rapeseed oil donated by the Co-operative League of U.S.A. or Canada either in the same form or after

refining the same, if sold by (i) NDDB (ii) the Maharashtra State Oilseeds Growers Federation Limited (if they have purchased from NDDB between 01/02/1985 to 22/03/1989) and (iii) any dealer who has purchased the same from the above two institutions or from any dealer who has purchased the donated oil from the aforesaid two institutions. In the present case, it is not in dispute that the sale effected by the assessee in the State of Maharashtra is the donated oil purchased from NDDB. However, the exemption is denied to the assessee only on the ground that the donated oil was not purchased by the assessee in the State of Maharashtra.

13. It is pertinent to note that the Soyabean oil/rapeseed oil was donated by the Co-operative League of USA or Canada to the Government of India with a view to supply cheap edible oil to poor masses. In the Memorandum of Understanding arrived at by and between the donating countries and the Government of India, it was specifically provided that the sale of the donated oil should be free from taxes so that the consumers who are poor people of India can purchase the said oil at cheap rates. The exemption Notification Entry No.222 under Section 41 of the BST Act was issued in furtherance of the

object with which the oil was donated.

14. As stated hereinabove Notification Entry No.222(1) exempts sales tax on sale of donated oil in three cases. The first case of exemption set out in entry 222(1)(i) is on sales effected by the NDDB. NDDB has head office at Ahmedabad and branch office at Bombay. If sales of donated oil are effected by both the head office as well as the branch office, then both are entitled to the exemption. In other words, under exemption notification Entry No.222 (1)(i) the sale of donated oil in the State of Maharashtra by NDDB is wholly exempt irrespective of the fact that the sales are effected in Maharashtra by the NDDB head office in Ahmedabad or by the NDDB branch office at Bombay.

15. Similarly, the second category set out entry in 222(1)(ii) exempts sales of the donated oil effected by the Maharashtra State Co-operative Oilseed Grower's Federation Limited, provided, the Federation has purchased the same from NDDB between 01.02.1985 to 22.03.1989. Here also the exemption is available to the Federation irrespective of the fact that the donated oil is purchased from the NDDB's branch office at Bombay or NDDB's office anywhere in

India. In other words, the exemption under notification Entry 222(1)(ii) is available to the Federation even if the donated oil sold by it was purchased from the NDDB head office at Ahmedabad.

16. Now turning to the third category set out in entry 222 (1)(iii) with which we are concerned in this reference, the sales of the donated oil effected by any dealer is exempt provided he has purchased the said oil from NDDB or Federation set out in entry 222 (1)(i) and (ii) or from any dealer who has purchased the same from the aforesaid two institutions. The contention of the revenue that the benefit of exemption under entry 222(1)(iii) is available to a dealer only if he has purchased the same in Maharashtra cannot be accepted for more than one reason. Firstly, it is well settled in law that exemption notification has to be read strictly so far as the eligibility is concerned. In the present case when the notification does not suggest that the donated oil must be purchased in Maharashtra, it is not permissible to read the notification with the addition of the words ‘purchased in Maharashtra’. Secondly, there is no warrant to construe the exemption notification entry 222(1)(iii) narrowly so as to hold that the dealer selling the donated oil in

Maharashtra must purchase the same in the State of Maharashtra, especially when the Federation set out in Entry 222(1)(ii) is entitled to exemption even if it has purchased the oil outside Maharashtra. Thirdly, under Section 8(1)(ii) of the BST Act no sales tax is payable on sales of donated oil in the State of Maharashtra by one dealer to another are exempt. In this view of the matter, the contention of the revenue that exemption from sales tax under entry 222(1)(iii) is applicable only if the donated oil is purchased in Maharashtra renders the notification redundant and such a construction which renders the notification redundant cannot be accepted.

17. The contention of the revenue that the word ‘any dealer’ in entry 222(1)(iii) means any dealer registered in Maharashtra is also unacceptable. As stated earlier the object of the notification is to grant exemption to the sale of donated oil in the State of Maharashtra. Therefore, reference to the purchase in entry 222(1)(iii) is only to ensure that the oil is purchased from the two institutions and it is wholly immaterial as to whether the said oil is purchased from the two institutions in Maharashtra or elsewhere. Similarly, any dealer who has purchased the donated oil from another dealer is also entitled

for exemption provided that dealer had purchased the same from the two institutions whether in Maharashtra or elsewhere. Therefore, the words ‘purchased from any dealer’ does not refer to a dealer in Maharashtra but a dealer who has purchased the donated oil from the two institutions whether in Maharashtra or elsewhere. The apprehension of the revenue that if the words ‘purchased from any dealer’ is construed to mean ‘purchased from any dealer anywhere in India’ it would render the notification beyond the scope of BST Act is also not well founded. As stated earlier, entry 222(1) deals with the exemption on sales and not on purchases. Therefore, for the purposes of entry 222(1) it is wholly immaterial as to the place from where the donated oil is purchased and what is material is that the donated oil sold must have been purchased from the two institutions. In the present case the assessee has established that the donated oil sold in Maharashtra was purchased from NDDB. Once it is established that the donated oil sold in Maharashtra was received from NDDB, it is not necessary to go into the question as to whether the assessee directly purchased the oil from NDDB or purchased the same through its head office and, thereafter received on stock transfer.

18. For all the aforesaid reasons, we are of the opinion that the Tribunal was in error in holding that the assessee was not entitled to the benefit of exemption entry 222(1) issued under Section 41 of the B.S.T. Act.

19. In the result, the question referred to us is answered in the negative i.e. in favour of the assessee and against the revenue.

20. The reference application is disposed of in the above terms with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)